



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 2926-99

2 June 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 31 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Naval Reserve on 16 April 1980 for six years at age 27. You were ordered to active duty on 30 April 1980 for a period of 36 months in the Active Mariner Program. The record reflects that on 15 July 1980 you were processed for a fraudulent enlistment due to an undisclosed civil arrest. However, the commanding officer recommended that you be retained given your good record in recruit training and demonstrated desire to remain in the Navy. On 8 August 1980, the Chief of Naval Personnel approved your retention and directed that you be counseled and warned that further misconduct could result in disciplinary action and processing for administrative separation.

The record further reflects that you served nearly seven months without incident. However, during the 20 month period from October 1980 to June 1982 you received three nonjudicial

punishments (NJP) and were convicted by a summary court-martial. Your offenses consisted of three instances of assault, a 27-day period of unauthorized absence, damaging military property, drunk and disorderly conduct and disrespect.

On 22 April 1983 you were convicted by a special court-martial of two periods of UA totalling 162 days, from 2 to 28 September 1982 and 1 November 1982 to 16 March 1983. You were sentenced to confinement at hard labor for 75 days, reduction in rate to SR (E-1), and a bad conduct discharge. You were placed on appellate leave on 11 May 1983 and the Navy Court of Military Review affirmed the findings and the sentence on 30 September 1983. You received the bad conduct discharge on 21 February 1984.

In its review of your application the Board conducted a careful search of your service record for any mitigating factors which might warrant recharacterization of your discharge. However, no justification for such a change could be found. The Board noted the letters of reference and commendation; training certificates; and your contentions that your attorney during the special court-martial was inexperienced, problems with an estranged wife and daughter offered in mitigation were ignored, and that discrimination played a large part in the circumstances surrounding your case. The Board concluded that the foregoing contentions were insufficient to warrant recharacterization of your discharge given your record of three NJPs and convictions by a summary court-martial and a special court-martial. The Board is prohibited from reviewing the findings of a court-martial and must restrict its review to determining if the sentence of the court-martial should be reduced as a matter of clemency. In other words, claims that counsel was ineffective or incompetent, matters in mitigation and extenuation were not considered, or that discrimination played a large part in the verdict, are matters which cannot be considered by the Board because that is the purpose of an appeal. The Board noted that you did not receive the maximum sentence that could be awarded by a special court-martial. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. The Board concluded that the discharge was proper and no clemency is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director